IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2005

Coram :

THE HONOURABLE MR.MARKENDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE D.MURUGESAN

Writ Appeal No.4094 of 2004

Shanthal — Appellant/3rd Respondents

v.

1. L.Ganesan

2. The Regional Director,
   Municipal Administration
   Corporation Complex,
   Madurai.

3. Devakottai Municipality,
   represented by its
   Commissioner, Devakottai,
   Sivagangai District. — Respondents/Petitioner, Respondents 1 and 2

Writ Appeal is filed under Clause 15 of the Letters Patent against the order made in writ petition No.1601 of 2004 dated 22.11.2004.

For Appellant : Mr.AR.L.Sundaresan

For Respondent 1 : Mr.P.Thilak Kumar

For Respondent 2 : Mr.V.Raghupathi,
Government Pleader

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JUDGMENT

(Judgment of the Court was delivered by
the Honourable the Chief Justice)

This writ appeal has been filed against the impugned order of the learned single Judge dated 22.11.2004. The appellant was elected as a Chairman of the Devakottai Municipality in Sivagangai District. A notice under Section 40-B of the Tamilnadu District Municipalities Act, 1920 was given signed by 15 members of the Municipal Council.

2. Under Section 40-B of the Act one third of the sanctioned strength has to give a notice and admittedly, the sanctioned strength of the Municipal Council in the present case is 27. Hence, a minimum of 9 members had to sign the notice, and in this case 15 members had signed it, which is much more than the minimum required by Section 40-B of the Act.

3. Learned counsel for the appellant contended that the copy of the notice was not given to the appellant and hence there was violation of Section 40B of the Act. This fact has been disputed by the writ petitioner who has filed the writ petition praying for a direction to convene a meeting. Without expressing any opinion on the factual controversy as to whether the Chairman had been given a copy of the notice or not, we are of the opinion that the provision for supply of a copy to the Chairman is only for the purpose that the Chairman should know what are the allegations made against him/her.

4. Section 40-B of the Act, in our opinion, is a democratic provision and the spirit behind this provision is that if atleast two third of the sanctioned strength has lost the confidence on the Chairman, then he/she should not be allowed to continue. This democratic provision should not, in our opinion, be stultified, by technical procedural requirements, otherwise, that would go against democracy. Hence, the notice under Section 40-B was valid.

5. As a copy of the notice has been filed in the typed set in the writ petition, hence, in our opinion, that would amount to service of notice on the appellant. While we uphold the judgment of the learned single Judge, we direct that the meeting as called for in the notice under Section 40-B of the Act should be fixed within a month from the date of receipt of a copy of this order.

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6. With these observations, this writ appeal is disposed of. No costs. The connected WAMPs.7714, 7715, 7796 and 7797 of 2004 are closed.

03.01.2005

mf

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copies to

1. The Regional Director,
   Municipal Administration
   Corporation Complex,
   Madurai.

2. The Commissioner,
   Devakottai Municipality,
   Devakottai,
   Sivagangai District.

1 cc to the Govt. Pleader, High Court, Madras in SR.302
1 cc to Mr.AR.L.Sundaresan, Advocate in SR.222
1 cc to Mr.V.R.Shanmuganathan, Advocate in SR.328

cp (co)
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